IN THE HIGH COURT OF JUDIATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5118 OF 1995

The Estate Investment
Co. Pvt. Ltd. & Anr. .. Petitioners.
Vs.
The State of Maharashtra
and Anr. .. Respondents.

Shri Atul Setalwad, senior counsel with Shri G.R.Rege. Shri V.B.Naik i/b M/s.Mehta & Girdharilal for the petitioner.
Shri A.A.Kumbhakoni, Associate Advocate General with Shri S.R.Nargolkar AGP for respondent nos.1 and 2.
Shri S.G.Karandikar for respnodent nos.3 and 4.

CORAM : B.H.MARLAPALLE & D.B.BHOSALE, JJ.
DATED : APRIL 3, 2006.

P.C:

. This petition filed under Article 226 of the Constitution prays for various reliefs under section 44 of the Maharashtra Land Revenue Code, 1966 ("MLR" for short). The petitioners' claim to be the grantees of the subject land as set out in Exhibit B-I. They alleged that non agricultural certificates are issued from time to time in respect of the subject land or parts therein by the Tahsildar/S.D.O. as the case may be and without any knowledge of or notice to the petitioners. The petitioners' claim that the right under Article 300A of the Constitution is affected in respect of their status as the grantees and they are entitled

to receive 1/3rd rent. They have relied upon the decisions of this Court in the Second Appeals. The competent authorities for the respondents have oppossed the petition and it has been contended that the subject lands are not Eksali lands and the petitioners are not entitled for any notice while entertaining the application for N.A. permission unless the names of the petitioners are entered as superior land holders. The private respondents who claim to be in possession of a part of the land as at present have opposed the status of the petitioners either to object for N.A. permission or to receive the notice on such application having been received by the competent authority. They claim that the Division Bench of this Court in Appeal no.230 of 1947 decided on 12th July, 1950 has adjudicated upon the petitioners status in respect of the subject land and it has been impliedly held that the lands are not Eksali lands.

2. In a petition under Article 226 of the Constitution it would not be possible to exercise the jurisdiction of this Court in deciding the petitioners' status over as well as the nature of the land. This can be more efficaciously done by the concerned Revenue Authorities or in the alternate by filing a civil suit. Mr.Setalwad, the

learned senior counsel invited our attention to prayer clause (iii) in the alternative which reads as under:

> "(iii) in the alternative to prayer b(i) above ordering and directing the 2nd Respondent to give a hearing to the 1st Petitioners before granting any permission for conversion of the use of the said Ek-sali lands, more particularly described in Exhibit 'B-1' hereto, or any part thereof, from agricultural to non-agricultural.
>
> (iv) ordering and diercting the 2nd Respondent to furnish to the 1st Petitioners a list of all matters, from 28th January, 1989 till date, wherein the 2nd Respondent has granted permission for the conversion of the use of the said Ek-sali lands, more particularly described in Exhibit 'B-1' hereto, or any part thereof from agricultural to non-agricultural, along with the names and addresses of the persons to whom the said permissions have been granted.
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> (c) For a Writ of Prohibition or a Writ in the nature of prohibition or any other appropriate writ, order or direction against the Respondents restraining the 2nd Respondent either by himself or through his servants, agents, officers and subordinates from entertaining any application from or granting any permission to the cultivators of the said Ek-sali lands, more particularly described in Exhibit 'B-1' hereto, or from or to any person whatsoever for conversion of the use of the said Ek-sali lands or any part thereof from agricultural to non-agriculture without the consent in writing of the 1st Petitioners."

. In short, it was contended before us that the petitioners would be satisfied if the competent authority gives a notice to them on receiving the applications for non-agricultural permission in

respect of any plot forming a part of the land as described in Schedule B-1.

3. Shri Kumbhakoni, the learned Associate Advocate General invited our attention to the affidavit in reply filed by Mr.Bharat Shitole, Resident Deputy Collector, Thane and submitted that wherever the petitioners' names are recorded as superior holders within the meaning of section 2(32) of the MLR Code they shall be given notice and in other cases they are not entitled for any such notice.

4. Section 44 of the MLR Code gives a right of notice to the occupant, superior holder of the alienated land or a tenant. Though the petitioners' claim that in respect of all the land listed in Exhibit B-1 they are entitled to receive 1/3rd rent, it is contended by the State Government that in fact they are not receiving 1/3rd rent for the entire land at present. This disputed question of fact cannot be gone into by us and further the revenue authorities may decide it by following the procedure under the MLR Code or by an appropriate Civil forum to decide the same issue. It has been further pointed out to us that on account of the interim order passed by this Court while admitting

the petition, the applications for N.A. permissions have been pending and in fact sometimes rejected by the authorities concerned and, therefore, the petitioners would be relegated to the alternative remedy which is more efficacious.

5. We note down the statement made by the Deputy Collector that the petitioners shall be noticed as and when the application for N.A. permission is received in respect of the land if the petitioners are shown as superior holders, and we record the statement made by the learned senior counsel for the petitioners that they would approach the concerned forum for getting their rights adjudicated as superior holders in respect of remaining or disputed portion of land. If such proceedings are initiated within a period of 10 weeks, we direct the concerned forum to decide the proceedings expeditiously and on their own merits and in any case without being influenced by this order. The protection granted by this Court shall operate for a period of 10 weeks from today. We clarify that all the contentions of the respective parties are left open and we need not be presumed to have considered any of them.

(D.B.BHOSALE, J.) (B.H.MARLAPALLE, J.)